

1 of the company, outside of your employer, to learn their view  
2 as to the quality of the Keystone boiler?

3 A. Over the years of being there, yes.

4 Q. Based on the various conversations that you've had,  
5 what was your understanding as to the reputation of Keystone  
6 in the marketplace?

7 A. Well respected, extremely conservative, very robust  
8 design. Expensive product, but you paid for what you got.

9 Q. Among those who were in the boiler industry, was the  
10 Keystone name well known?

11 A. In the watertube boiler industry, yes.

12 Q. I'd like to show you what's been marked as Gdaniec  
13 Exhibit 36. It's a document stamped IKE1274. Do you see how  
14 this appears to be a copy of a February 10, 2003 e-mail from  
15 Mark White to Shawn Brewer on the subject of Atofina,  
16 utilization of the Heinz broiler?

17 (Gdaniec Deposition Exhibit No. 36 marked for  
18 identification.)

19 A. Yes. I see that.

20 Q. In February 2003, Mark White was still working for  
21 EPTI, correct?

22 A. I believe so, yes.

23 Q. Mr. White writes, "Shawn, As you are aware, at  
24 present the Atofina boiler is sized as a 14M special (with  
25 watercooled walls)." Do you see that?

1 A. Yes.

2 Q. His reference to a 14M special, within EPTI, in or  
3 before February, 2003, did the reference of a Keystone boiler  
4 to being a special have significance?

5 A. Yes.

6 Q. What was meant when someone at EPTI referred to a  
7 Keystone boiler as being special?

8 A. It was nonstandard. It was 14M, but had changes to  
9 it. And here he highlights with watercooled walls. Could  
10 be one change, there was a lot of changes that made it  
11 special.

12 Q. But watercooled walls would be something that took  
13 the boiler outside the scope of the standard Keystone  
14 watertube boiler?

15 A. Yes.

16 (Pause in the proceedings.)

17 Q. I'd like to show you a two-page document stamped  
18 IKE6233 to 6234, which has been marked Gdaniec 37. Do you  
19 see how the lower e-mail on the first page is dated February  
20 19, 2003 from Dave Briggs to Mark White and you're copied on  
21 it, and the subject is listed, "Remaining marked-up drawings  
22 for Victory Energy license agreement?"

23 (Gdaniec Deposition Exhibit No. 37 marked for  
24 identification.)

25 A. Yes.

1 Q. Did you review this e-mail and the one on top of it  
2 from February 19, 2003 at or about the time it was sent?

3 A. I don't recall, no.

4 Q. The top e-mail from Dan Levstek to Dave Briggs and  
5 Mark White, on which you're copied on the same subject, reads  
6 in part, "Mark, As these drawings are outside of the basic  
7 license agreement, we should put a disclaimer in the  
8 transmittal to Victory that they are for use on this specific  
9 project only." What was Dan Levstek's position in February  
10 2003?

11 A. It would have been vice president. I don't believe  
12 there was a caveat, it was just vice president of the  
13 company, I think.

14 Q. Did Mr. White come to you to have a discussion about  
15 the e-mail that Mr. Levstek sent to him and Mr. Briggs,  
16 copied to you, in which he said the drawings are outside the  
17 basic license agreement and that there should be a disclaimer  
18 in the transmittal to Victory that they are for use on this  
19 specific project only?

20 A. Not that I recall.

21 Q. Did you expect Mr. White to work with Mr. Levstek  
22 given that he was vice president of the company?

23 A. Yes.

24 MR. SHEEAN: Objection, lack of foundation.

25 MR. GISLESON: I'm going show you a document that

1 your letter, which was Exhibit 27. Did you understand that  
2 Mr. White was doing a, basically, point-by-point response to  
3 your letter?

4 A. Yes.

5 Q. He writes in his first and second paragraphs that  
6 certain of the changes -- well, strike that. He writes in  
7 the first paragraph, "The agreement does provide specific  
8 geometry and characteristics." And that's what the point of  
9 Annex 1 is; is that right?

10 A. Yes.

11 Q. He then says, "But also allows for improvements,  
12 refer to Clause 13. As such, VEO has made improvements which  
13 are necessary to offer/provide a Keystone boiler that is  
14 technically compliant with our customers' requirements, is in  
15 line with that of our competitors' offerings, and as we deem  
16 necessary to enhance our overall success." I think you said  
17 VEO never notified EPTI of any improvements that it had made;  
18 is that correct?

19 A. Correct.

20 Q. After you received a copy of this March 30, 2004  
21 letter, did Mr. White tell you that he was mistaken in  
22 describing membrane walls as being an improvement, as shown  
23 in Paragraph 2 on the second page of his letter?

24 A. No. We had very little discussion after this.

25 Q. If we look down to Paragraph 4B of the March 30,

1 2004 letter that Mark White sent to EPTI, do you see how he  
2 writes, "The brochure and sales information of VEO is the  
3 sole property of VEO, and disclosure is not required by the  
4 agreement." Did he, at some point after March 30, 2004,  
5 provide you or anyone else at EPTI, to your knowledge, with a  
6 copy of the brochure and sales information that VEO utilized  
7 for the Keystone standard M series?

8 A. No. Not -- we did not get it from Mark White.

9 Q. Did Mark tell you words to the effect that you don't  
10 need to see the brochure and sales information for VEO  
11 because I approved it back when I was working for EPTI?

12 A. There was no discussion with me.

13 Q. He also writes, in Paragraph 4B, "Photographs of the  
14 mark will be provided for the various boilers provided." Did  
15 you ever receive photographs of the mark from VEO?

16 A. We received photographs of the S stamp, but that was  
17 not the mark that we were looking for. We were looking for  
18 the use of the Keystone name and the mark as defined by the  
19 license agreement.

20 Q. Did anyone from VEO, after March 26, 2004, provide  
21 you with photographs of the mark showing the Keystone name on  
22 boilers that had been sold by VEO?

23 A. No.

24 Q. I'd like to ask you about the attempted sale of the  
25 Keystone technology to VEO. I think you said you're not

1 certain whose idea it was to purchase the technology, whether  
2 it was VEO's idea or EPTI's idea.

3 A. Yes. Correct.

4 Q. Based on your involvement in that process, what was  
5 it that VEO wanted to purchase?

6 A. Their expectation was to purchase everything. The  
7 entire O boiler technology line.

8 Q. Based on what VEO said to you, was it willing to  
9 purchase just the M series line of boilers that it had  
10 licensed?

11 A. No. They had no desire for just that subset.

12 Q. Who told you VEO had no desire to purchase just that  
13 subset?

14 A. It was obvious in the phone call discussions with  
15 Mark White and in the ceasing of discussions on the concept  
16 of trying to move it forward that there was no intention.

17 Q. Did Mark White tell you why VEO was not satisfied  
18 with just purchasing the standard M series technology?

19 A. Not directly, no. Or indirectly, no.

20 Q. Now, in the draft purchase agreement that we saw,  
21 there was a proposed sale price of \$250,000. Do you recall  
22 that?

23 A. I recall that there was something like that, yes.  
24 250.

25 Q. That's in Exhibit 23, on Page 3, which is VEO964.

1 Did VEO at some point agree to pay \$250,000 for the  
2 technology, assuming that you could reach agreement on the  
3 other terms?

4 A. No. We never got -- once we stopped the discussion  
5 and tried to rewrite the agreement, we never got back to a  
6 discussion on, at least that I was directly involved with,  
7 purchase price or what's the value of it. The discussions  
8 ceased when we made the clear distinction between M series  
9 and O series and O boiler technologies.

10 Q. Did VEO also insist during that process that it  
11 obtain rights to the Keystone name?

12 A. That was part of the original draft of the agreement  
13 was that he got full rights to the --

14 Q. For how long did VEO want full rights to the  
15 Keystone name?

16 A. I'm not sure of the terminology that was used, but  
17 it was basically indefinite.

18 Q. Was EPTI willing to give indefinite rights to the  
19 Keystone name to VEO?

20 A. No.

21 Q. Why not?

22 A. The original intention was, if we were to sell  
23 something, we would sell a subset of the product, but not  
24 give up the complete product line in its entirety. And the  
25 identity in the market was to maintain the Keystone boiler as

1 a product line.

2 Q. Can you identify, in order of priority, what the  
3 obstacles were to reaching agreement with VEO on the sale of  
4 the technology?

5 A. I think the biggest obstacle was when we separated M  
6 series and made it distinct relative to the entire O boiler  
7 line. That all the company was interested to sell was truly  
8 the M series standard product.

9 Q. That was a deal breaker for VEO?

10 A. Yeah. The rest of the discussion -- we ceased the  
11 discussion at that point. The minor issues of name and  
12 licensing that Keystone name became secondary to it.

13 Q. To go back to January 2003 when you were talking  
14 about seeing the license agreement and the drafts of Annex  
15 1 -- or the draft of Annex 1. You refer to there being a  
16 flurry of activity before the license agreement was executed.  
17 What was the reason for the flurry of activity?

18 A. Up until the time that it was published in the  
19 company it wasn't evident that everybody in the company knew  
20 what was happening. That it was an -- that a deal was being  
21 made, but it certainly wasn't in concert with what the  
22 collective opinions of the company was. So it was  
23 engineering and sales and service, and the flurry of activity  
24 was all the people finding out what was happening and  
25 discussions initiating after that as what exactly is



1 A. Not that I recall.

2 Q. Was it important to you that any updates or  
3 improvements would be owned by EPTI?

4 A. Yes.

5 Q. Now, there were questions about updating the  
6 Keystone for customer requirements and code requirements. Do  
7 you recall that?

8 A. Yes.

9 Q. In updating the Keystone for customer requirements  
10 and code requirements, in your view was it still necessary  
11 for VEO to comply with the license agreement?

12 A. Yes.

13 Q. By "customer requirements," did you understand that  
14 to mean having the Keystone comply with prevailing site  
15 conditions at a customer's location?

16 A. Yes.

17 Q. When you're talking about "prevailing site  
18 conditions," what does that mean?

19 A. It could be anything. Wind, seismic, fuel  
20 conditions, steam conditions, whatever the conditions  
21 surrounding the site needs.

22 Q. And in terms of complying with code requirements, is  
23 it necessary for a boiler to have membrane walls in order to  
24 comply with affable code?

25 A. No.

1 Q. Does that include, for example, the drum internals  
2 for a superheated unit could be used for the drum internals  
3 in an HRSG?

4 A. Yes. Drum internals are generic to the product.  
5 They could fit in any boiler.

6 Q. So the technology could also be used with other  
7 fired boilers, such as heated solid waste field-erected  
8 boilers?

9 A. Could be, yes.

10 Q. In terms of the membrane walls that were designed  
11 and tested by EPTI or its predecessors, were those all  
12 engineers employed by EPTI or under other predecessors  
13 involved in that design and testing?

14 A. I can't speak for all in the past. The majority I  
15 would say, yes, were Zurn or EPTI employees.

16 Q. To go back to the question about having a boiler  
17 meet code, was it necessary to increase the drum size or  
18 lengthen the boiler in order to meet code?

19 A. Not the boiler and pressure vessel code, no.

20 Q. Did you have conversations with Stephen Kang about  
21 your participation in the preparation of the license  
22 agreement and the annex back in January 2003?

23 A. Not --

24 MR. SHEEAN: Objection. Mischaracterizes his prior  
25 testimony.

1 MR. SHEEAN: Calls for speculation, lack of  
2 speculation.

3 A. In my opinion, they were taking advantage of the  
4 situation.

5 Q. For example, one of the disagreements involved  
6 whether membrane walls were within the scope of the license  
7 agreement, correct?

8 A. Yes.

9 Q. That was an issue that was addressed while Mark  
10 White was at EPTI, correct?

11 MR. SHEEAN: Objection. Vague.

12 Q. Based on the documents that we reviewed today in  
13 your deposition.

14 MR. SHEEAN: Objection. Vague, lack of foundation,  
15 mischaracterizes prior testimony.

16 Q. You can answer.

17 A. There was discussions early on in the license  
18 agreement of what defined the boiler geometry and the  
19 annexes, yes.

20 Q. During the time Mark White was involved in the  
21 drafting of Annex 1, and the administration of the license  
22 agreement while employed by EPTI, he did not dispute the  
23 geometry and characteristics of the Keystone boiler that was  
24 licensed, as set forth in Annex 1; is that correct?

25 MR. SHEEAN: Objection. Asked and answered.

1 A. I don't know if he did or not.

2 Q. Did he say anything to you to dispute that membrane  
3 walls were not included within the scope of the license  
4 agreement while he was employed with EPTI?

5 MR. SHEEAN: I'm going to object to the extent it  
6 mischaracterizes documents that we've seen and  
7 testimony we've already heard. But you can answer.

8 A. No.

9 MR. GISLESON: Could you read back my question and  
10 answer.

11 (Record read back.)

12 MR. GISLESON: Those are all the questions I have.

13 MR. SHEEAN: Thanks, Mr. Gdaniec.

14 MR. GISLESON: You have the right to read and sign  
15 the transcript, or you can waive that right.

16 Generally speaking, I'm sure Chris will say the  
17 same thing, it's your decision to make, witnesses  
18 generally reserve the right. Maybe they read the  
19 transcript; maybe you don't. But it gives you a  
20 chance to go back through and read it to make any  
21 changes, whether substantive or, in the unlikely  
22 event, typographical that may have occurred.

23 THE WITNESS: I'd like to do that.

24

25 (Deposition concluded at 2:55 p.m.)

1 doesn't have a Bates stamp. It was produced --  
2 it's the same issue we had back in Tulsa.

3 MR. SHEEAN: For the record, I'm going to object to  
4 the use of documents that don't have Bates stamps  
5 on them to the extent that I can't confirm that  
6 they were produced in this litigation, and  
7 therefore, I think it constitutes unfair surprise.  
8 But to the extent they were produced and the Bates  
9 label can be identified subsequently, I withdraw my  
10 objection.

11 Q. I want to show you what's been marked as Gdaniec  
12 Exhibit 38. It's a two-page document. Do you see in the  
13 lower part of the first page, there's an e-mail from Trent  
14 Miller to Dave Briggs on the subject of a couple of questions  
15 in which he writes, "We have a new project that we're going  
16 to make a 14M, but I've been looking at the boiler that you  
17 built for us, your Project 2023, and am getting confused."  
18 Was Project 2023 the project you referenced earlier today?

19 (Gdaniec Deposition Exhibit No. 38 marked for  
20 identification.)

21 A. Yes. That was Heinz.

22 Q. Above that Mr. Briggs writes, and copied you on the  
23 e-mail, also on July 10th, "Trent, In response to your  
24 questions, please remember that the license agreement was for  
25 our standard M series Keystone package boilers. These

1       boilers are all saturated refractory rear and front wall with  
2       a tangent furnace wall. Our order G.O. 2023 was a special  
3       Keystone, not a 14M, not a 15M, but a special. This order  
4       was an all welded wall design. You cannot compare apples to  
5       oranges. They're just not the same. So to answer your  
6       question as to what model size was G.O. 2023, the answer is  
7       that it is not a model size." Was Mr. Briggs accurate in his  
8       characterization?

9           A.    Yes.

10          Q.    Did you understand that Trent Miller was an engineer  
11       with Victory in July 2003?

12          A.    Yes.

13          Q.    I'd like to show you what's been marked as Gdaniec  
14       Exhibit 39. It's a document stamped V116 to V117. Do you  
15       see how this is an e-mail from you to Jay McConaughy in --  
16       March 23, 2004 on the subject of Dallas-Fort Worth additional  
17       analysis?

18                   (Gdaniec Deposition Exhibit No. 39 marked for  
19                   identification.)

20          A.    Yes.

21          Q.    You copied Mark White on this, right?

22          A.    Yes. Correct.

23          Q.    And as of this time Mark White worked at VEO; is  
24       that correct?

25          A.    I believe so, yes.

1 Q. And the Dallas-Forth Worth, or DFW, project was one  
2 you identified before as being outside the scope of the  
3 license agreement; is that right?

4 A. Yes.

5 Q. But it was pursued by VEO with EPTI's knowledge and  
6 consent; is that correct?

7 A. Yes.

8 Q. And then you write, in the first paragraph, "Jay,  
9 This is getting tougher to break out individual costs for  
10 these items. This boiler is clearly well beyond the standard  
11 M series boiler and should have completed detail design  
12 analysis conducted on it. By no stretch of the imagination  
13 can this boiler be considered a standard." Did I read that  
14 correctly?

15 A. Yes. That's correct.

16 Q. That's what you wrote at the time, right?

17 A. Yes.

18 Q. So were you clearly telling VEO that this was a  
19 boiler outside the scope of the license agreement?

20 A. I was trying to emphasize to them that by no means  
21 was this a standard boiler.

22 Q. Now, did you get a response from Jay McConaughy  
23 disputing your characterization of the license agreement?

24 A. No.

25 Q. Did Mark White contact you on or after March 23,

1 A. Yes. Correct.

2 Q. Isn't it possible that Mark White was referring to  
3 the increase in the steam capacity above 150,000 pounds per  
4 hour to designate the difference between the M series and the  
5 O?

6 A. No.

7 MR. GISLESON: Objection.

8 Q. Had you ever had a conversation with Mark White  
9 where you specifically were able to confirm that?

10 A. Yes. Because the discussion was all-around relative  
11 to our distinction of what the M series was versus what the O  
12 boiler line could be, and Victory wanted the full flexibility  
13 of what the O boiler could be and not be limited to what the  
14 M series was.

15 Q. And that was based on what Erie Power was defining  
16 the M series to be, correct?

17 A. And what -- yes. And what Erie Power was willing to  
18 sell under this discussion that we're having here in the  
19 e-mails. That we weren't interested in selling the entire O  
20 boiler line. We were only interested to sell the subset  
21 called the M series technologies.

22 Q. To the best of your knowledge, there were no similar  
23 discussions before the execution of the original license  
24 agreement regarding the Erie Power understanding of the M  
25 series boiler line, correct?



1           A.   Only to the -- with respect to that issue, only to  
2   the fact that Mark White says Victory understands they're  
3   going to have to do a lot of work and update and do a lot of  
4   re-engineering work. There was no specific discussion of  
5   explaining to you the difference between the products.

6           Q.   There was no discussion with Victory Energy?

7           A.   Not by myself, but I would assume that, based on  
8   Mr. White's response, everyone understood that there was a  
9   lot of work to do to update the product line and make it more  
10   sellable.

11          Q.   You didn't answer my question, Mr. Gdaniec. My  
12   question was, to the best of your knowledge, no one from Erie  
13   Power had a similar discussion with Victory Energy where they  
14   laid out Erie Power's definition of the M series boiler line  
15   prior to the execution of the original license agreement;  
16   isn't that true?

17               MR. GISLESON: Objection. Assuming such a  
18               conversation --

19          A.   I would have to say I'm not aware of if there was or  
20   was not a discussion of that level.

21          Q.   You've been handed what's been marked as Gdaniec  
22   Exhibit 25, which, for the record, is Bates labeled IKE7432  
23   through IKE7436. Take a look at this document, and let me  
24   know when you've had a chance to review it.

25               (Gdaniec Deposition Exhibit No. 25 marked for

1 identification.)

2 A. Okay.

3 MR. GISLESON: I apologize, the handwriting with  
4 the date on the top is mine.

5 A. Okay.

6 Q. Mr. Gdaniec, did you prepare this document?

7 A. Yes, I did.

8 Q. Did you forward it to Mark White on or about March  
9 26, 2004?

10 A. Yes, I did.

11 Q. Do you see that under the term "Current License" it  
12 says, "Provides VEO the right to market and manufacture the  
13 standard M series product within a defined size and capacity  
14 range with an extension to permit addition of superheaters to  
15 the standard line."?

16 A. Yes.

17 Q. Below that it says, "Extended License Option: This  
18 is the Annex 1 description. This portion expands  
19 availability of the products to the full O boiler line and D  
20 boiler line within a defined size and capacity range while  
21 preserving the original agreement scope and general  
22 conditions. This would give VEO access to a wide range of  
23 sizes, pressure, and temperature capacity, the use of welded  
24 wall, as well as provide access to steam purity equipment  
25 which is not part of the current license scope." Do you see

1 that?

2 A. Yes, I do.

3 Q. Did you understand at that time that Victory Energy  
4 took the position that the license agreement took the right  
5 of Victory Energy to sell membrane wall boilers?

6 MR. GISLESON: Objection. Mischaracterizes the  
7 evidence.

8 A. I don't know if Victory felt that of the license  
9 agreement or not. I don't know. I was not aware of that.

10 Q. The -- strike that. The license agreement that had  
11 been in place for almost 15 months at this point, correct?

12 A. Yes.

13 Q. To your knowledge, had Erie Power ever refused to  
14 allow Victory Energy the right to sell a membrane wall boiler  
15 prior to March 26, 2004?

16 A. We never specifically prohibited it, no.

17 Q. To your knowledge, did Erie Power ever refuse to  
18 support Victory Energy in the engineering of a boiler that  
19 included membrane wall technology?

20 A. No. Not to my knowledge.

21 Q. And that was true before March 26th and after March  
22 26th, correct?

23 A. It was true definitely before March 26th.

24 Q. Can you identify a single project after March 26th  
25 where Erie Power refused to provide Victory Energy

1 engineering support on a membrane wall boiler?

2 A. There was less discussion after the -- the failure  
3 of the sales and the extension of the license agreement,  
4 there was less and less discussion with regard to EPTI and  
5 Victory with regards to any project work they were pursuing,  
6 and more focus was being focussed on the bankruptcy and  
7 moving the company forward.

8 Q. Can you identify a single instance after March 26,  
9 2004 where Erie Power refused to provide support to Victory  
10 Energy on a membrane wall boiler?

11 A. No, I cannot.

12 Q. On Page 7434, which is the third page of the letter,  
13 "Item No. 7. With regards to the use of the Keystone name,  
14 as with the software source code, this too is a difficult  
15 matter. Regardless of the course of this agreement, EPTI  
16 will maintain use and ownership of the O boiler line, which  
17 as you are well aware the Keystone name is a vital part of  
18 the heritage and credibility of that project." Do you see  
19 that?

20 A. Yes, I do.

21 Q. "As such, we cannot offer a perpetual license for  
22 the name that would survive the license agreement." Do you  
23 see that?

24 A. Yes, I do.

25 Q. Why was it Erie Power's position that it would not